IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.7599 OF 2004

Ajay Prakash Ambagade,]
resident of 29, Kotwal Nagar,]
Ring Road]
Nagpur.] ... Petitioner

Versus

1. University of Pune,]
Ganesh Khind, Pune.]
]
2. Vice Chancellor]
University of Pune, Pune.]
]
3. Controller of Examinations,]
University of Pune, Pune.]

4. Institute of Business Management &]
Research, Chinchwad, Pune.]...
Respondents

Ms. A.Kaushik for the Petitioner

Mr. Girish Kulkarni with Mrs. M.G. Kulkarni for Respondent Nos.1 to 3

Respondent No.4 served.

CORAM: V.G. PALSHIKAR, Acting C.J. & V.M. KANADE, J.

DATE : 29th AUGUST, 2006

JUDGMENT (Per Palshikar, Acting C.J.)

By this petition, the petitioner has prayed for a direction to the 1st respondent University requiring it to grant to the petitioner grace marks in one subject viz., Advanced Java Programming, and declare him as having passed the Master of Computer Application examination.

2. Facts necessary for adjudication of this dispute, stated briefly, are as under: -

3. The petitioner is a citizen of India and was permanent resident of Nagpur. He had joined the Pune University for obtaining the degree of Master of Computer Application, which was conferred by the University. The said post-graduate course was of three years' duration and consisted of six semesters, each semester being for six months. The petitioner undertook his studies for this post-graduate degree from June, 2000 and attended five semester till December, 2002. The sixth semester did not require any college attendance or any written examination. Thus the last examination, in conventional sense, which the petitioner took was for the fifth semester. The results for the sixth semester examination were declared on 30th January, 2003 and the petitioner was declared failed in the subject of Advanced Java Programming in which he has secured 25 marks out of 80, the minimum requirement for passing being 32

marks. The petitioner, therefore, claimed grant of grace marks according to the University Ordinances, which claim having been rejected the petitioner has approached this Court.

4. The examination of the fifth semester was conducted in October, 2002 and, therefore, the Ordinances, which came into force in the year 2003, were not applicable to the petitioner. However, it is an admitted position that identical Ordinance existed prior to 2003 and, therefore, all concerned relied on the Ordinance of 2003.

5. In the present petition, we are concerned with Ordinance 4 with deals with condonation of deficiency of marks in one examination. It reads as under: -

> "**Ordinance 4: Condonation**
>
> If a candidate fails in only one head of passing, having passed in all other heads of passing, his/her deficiency in such head of passing may be condoned by not more than 1% of the aggregate marks of the examination or 10% of the total number of marks of that head of passing in which he/she is failing, whichever is less. However, condonation, whether in one head of passing or aggregate head of passing, be restricted to maximum up to 10 marks only.
>
> Condonation of deficiency of marks be shown in the Statement of Marks in the form of asterisk and Ordinance number.
>
> Provided that this condonation of marks is concurrent with the rules and guidelines of professional

statutory bodies at the All India level such as AICTE, MCI, Bar Council, CCIM, CCIII, NCTE, etc.

Notes for Ordinances from 1 to 4 :

1. If a candidate fails in a head of passing, which is included in another head of passing, of the same subject, he shall be entitled to the benefit of the Condonation in both the heads, if necessary subject to the maximum limit of Condonation permissible.

2. If a deficiency of marks is condoned, the class/grade in the examination concerned, of the candidate shall be declared on the actual marks obtained by the candidate.

3. The benefit of not more than one Ordinance shall only be given for one examination of one course.

4. The benefits of above-mentioned Ordinances may be given to the candidates appearing in the examination with backlog and/or exemption whenever such an exemption/system of backlog has been provided.

5. The benefits under above mentioned Ordinances means and includes such examination/s on the basis of marks on which class/grade is awarded."

6. It will be seen from the above Ordinance that deficiency of marks in one head of passing may be condoned by not more than 1% of the aggregate marks of the examination subject to a maximum of 10 marks only. The petitioner claimed grant of 7 grace marks out of these marks as according to him he eligible for grant of such marks.

7. This claim was resisted by the University and it was contended that in view of Ordinance 140-A, the petitioner was not entitled to claim the benefit of

Ordinance 4 as he failed to appear again for the examination in the subject of Advanced Java Programming. According to the University, the benefit of Ordinance 4 is to be granted to such candidates who pass the final examination re-appearing in the subject in which they had earlier failed and if they fail again then only they can claim this benefit. It is the correctness of this submission which is required to be considered for proper and just adjudication of the petitioner's claim.

8. Ordinance 4, quoted above, is a benevolent Ordinance framed by the University for the benefit of students who otherwise successfully complete an examination, be it for post-graduation or final examination, and are on the verge of obtaining the degree of diploma. It is meant to prevent such students from losing an academic year and avoid holding of examinations by the University for the benefit of such students only for that one subject. The Notes below the Ordinance act as guidelines. It is clearly provided by Notes 4 and 5 that benefits of Ordinance 4 may be given to the candidate appearing in the examination with backlog and/or exemption, whenever such exemption or system of backlog has been provided. Note 5 then says that the benefit of Ordinance 5 shall be given at the time of declaration of final examination only. Thus the benefit of Ordinance 4 is to be given at the time of final declaration of post-graduate degree course. It is to be

given only once and the maximum is 10 marks. According to the University, this is so and it is also subject to Ordinance 140-A. A careful scrutiny of Ordinance 140-A will demonstrate that it is not attracted to the present case at all. It speaks of a candidate failing in a subject or a head of passing in an examination and provides how he can undertake examination in that subject at a future date. There is no bar in this Ordinance. There is, therefore, no question of Ordinance 140-A being in any manner detrimental to the petitioner for grant of the benefit under Ordinance 4.

9. It is an undisputed position that the petitioner has passed in all subjects in all five semesters and failed only in one subject i.e. Advanced Java Programming. Thereafter he completed the sixth semester and his result was declared in which he was not given the benefit of Ordinance 137. This benefit could be given to him because he claimed the same at the time of declaration of the result of the final examination only, that is, after completion of the sixth semester. There was no question of having any other examination after completion of the post-graduate degree course and, therefore, the petitioner was entitled to the grant of grace marks or for condonation of deficiency in marks as contemplated by Ordinance 137. The University committed an error of law in mis-interpreting Ordinance 137 and, consequently, this denial to give benefit flowing therefrom to the petitioner

is also an illegality. In our opinion, therefore, the petition deserves to be allowed and it is accordingly allowed. Hence, the following order: -

10. The 1st Respondent University shall grant to the petitioner the benefit of Ordinance 137 by awarding such marks as are necessary for passing in the Advanced Java Programming examination, subject to a maximum of 10 marks, and declare the petitioner as successful by awarding him the necessary post-graduate degree. This be done preferably in two months' time from today. Petition is accordingly disposed of.

ACTING CHIEF JUSTICE

V.M. KANADE, J.